IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 26573 of 2007(L)

OS.396/2005 OF IIIRD ADDL.SUB COURT, KOZHIKODE

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PETITIONER:

MRS. K.RAJI ASHOKAN,
W/O LATE K.ASOKAN,
RESIDING AT "ASOKA MANDIR",
NEAR 4TH RAILWAY GATE, CALICUT-673032.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.),
ADV. SRI.K.MOHANAKANNAN.

RESPONDENTS:

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1. **K.ANIL KUMAR, S/O LATE K.ASHOKAN,**
   "GALAXY APARTMENTS", NEAR NADAKKAVU POLICE STATION
   KATCHERI AMSOM AND DESOM OF KOZHIKODE TALUK,
   CALICUT-673032.

2. **K.VINOD, S/O A.K.ASHOKAN,**
   ASHOKA MANDIR, NEAR 4TH RAILWAY GATE,
   KALATHNKUNNU AMSOM, DESOM,
   KOZHIKODE TALUK, CALICUT- 673032.

3. **K.REEJA, D/O LATE K.ASHOKAN &**
   W/O SURESH A.G., RESIDING AT "SUDIN",
   CHEVAYOOR AMSOM & DESOM, KOZHIKODE TALUK,
   KOZHIKODE DISTRICT.

4. K.MINI, D/O LATE K.ASHOKAN AND W/O SANTHOSH.K, RESIDING NEAR CHEVAYOOR POLICE STATION, CHEVAYOOR AMSOM, DESOM, OF KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN FOR R1 TO R3,
SRI.PUSHPARAJAN KODOTH,
SRI.K.JAYESH MOHANKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.26573/2007-L:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE I.A. NO. 385/2007 ALONG WITH THE AFFIDAVIT IN SUPPORT THEREOF FILED IN O.S. NO. 396/2005 ON THE FILE OF THE IIIRD ADDITIONAL SUB COURT, KOZHIKODE.

EXT.P.2: COPY OF THE ORDER IN O.S. NO. 396/2005 DD. 20/06/2007 ON THE FILES OF THE IIIRD ADDITIONAL SUB COURT, KOZHIKODE.

EXT.P.3: COPY OF THE TITLE DEEDS FILED ON 09/07/2007 BEFORE THE IIIRD ADDITIONAL SUB COUT, KOZHIKODE IN O.S. NO. 396/2005.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No.26573 OF 2007

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Dated this the 5th day of November 2007

JUDGMENT

This writ petition is filed against the order of the III Addl.Sub Judge, Kozhikode in O.S.No.396/2005. By the said order, the court has directed the parties to produce resurvey sketch of the properties, tax receipts, etc. The suit is one for partition. The plaintiff filed Ext.P1 application with a prayer to advance the hearing date and include the suit in the list on the ground that there are no serious contentions between the parties. In such a situation, the court has passed an order directing the parties to produce documents.

2. The suit is one for partition between the mother and children. The decree that will be passed will be only binding on the mother and children and if a 3rd party is affected, the court need not consider at this stage without them on the party array. When a suit for partition is filed and the parties want to compromise the matter, the court shall not stand in the way raising technical objections. It is true that if the court considers that the property belongs to the Government or it is to defeat somebody, it can put question

to the lawyers who appear before court to clear the doubts. But, at the same time it is not the duty of the court to find out who is the real owner of the property in a suit for partition for the reason that the decree will be binding only on the parties and really a Commissioner has to inspect the property and if there is any objection, that will also come to the knowledge of the court at that stage.

Therefore, I feel that the learned Sub Judge has exceeded the limits and directed the parties to produce the documents when they really like to compromise the matter. The learned Sub Judge is directed to dispose of the matter in accordance with law and if the parties are compromising or agreeing for a partition, that may be considered and a preliminary decree may be passed.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-